

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

CHASKE ROCKBOY,)	
)	
Plaintiff,)	4:24-cv-4093
)	
v.)	COMPLAINT
)	
CHARLES MIX COUNTY, SOUTH DAKOTA;)	
RANDY THALER, OFFICIALLY and)	
INDIVIDUALLY; DERIK ROLSTON,)	
OFFICIALLY and INDIVIDUALLY;)	
and JAN BUDAVICH, OFFICIALLY and)	
INDIVIDUALLY,)	
)	
Defendants.)	

COMES NOW, the above-named Plaintiff by and through the undersigned counsel who files this Complaint as follows:

PARTIES

1. Plaintiff Chaske Rockboy, an indigenous male, enrolled member of the Yankton Sioux Tribe, is a natural person who resides in the town of Lake Andes on the Yankton Sioux Reservation.

2. Defendant Charles Mix County, South Dakota, exists under the constitution and laws of the State of South Dakota.

3. Defendant Randy Thaler is the Charles Mix County Sheriff.

4. Defendant Derik Rolston is a deputy sheriff for Charles Mix County.

5. Defendant Jan Budavich is a deputy sheriff for Charles Mix County.

JURISDICTION AND VENUE

6. The Court has jurisdiction pursuant to 28 U.S.C. § 1331 because this action asserts claims arising under the Constitution, laws, and treaties of the United States; and pursuant to 28 U.S.C. § 1367 because the pendent state law claims are so related to the claims in original jurisdiction that they form part of the same case or controversy.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claims occurred in this District.

FACTS

8. On December 2, 2021, Plaintiff was traveling between Lake Andes, South Dakota and Vermillion, South Dakota.

9. By 9:38 a.m. CST, Plaintiff was leaving the Lake Andes area.

10. By 10:51 a.m. CST, Plaintiff was traveling through the Yankton area.

11. At approximately 11:30 a.m. CST, Plaintiff arrived in the Vermillion area.

12. During this time frame, at 10:11 a.m. CST, Plaintiff began live streaming through Facebook, lasting an hour and fourteen minutes.

13. During the live stream, at 11:09 a.m. CST, Plaintiff made comments in reference to a state court judge while traveling somewhere between Yankton and Vermillion, South Dakota.

14. Later that day, Defendant Rolston, a sheriff's deputy for Charles Mix County, received a report that the Plaintiff had been on Facebook threatening to kill a judge.

15. Defendant Rolston then searched Plaintiff's Facebook account and viewed the video that Plaintiff livestreamed earlier in the day.

16. After viewing the video, Defendant Rolston along with Defendant Thaler, Charles Mix County Sheriff, located the Plaintiff's vehicle in the town of Lake Andes.

17. Defendant Rolston attempted to initiate a traffic stop.

18. Defendant Budavich, another sheriff's deputy for Charles Mix County, was present to assist in the stop and positioned her patrol vehicle in front of Plaintiff's vehicle at the intersection of School Street and 4th Avenue.

19. Upon stopping the Plaintiff's vehicle, Defendant Thaler advised Plaintiff that he was being placed under arrest for threatening to kill a judicial officer.

20. Defendant Rolston then smashed the passenger side window of Plaintiff's vehicle to gain entry.

21. Defendants next forcibly grabbed Plaintiff from the vehicle and violently took him to the ground.

22. Defendants caused injuries to the Plaintiff, which required that he be taken from the scene by ambulance to the hospital for medical care and treatment.

23. Additional medical attention was required due to the injuries sustained by Plaintiff.

24. The chain of events – beginning with the Defendants locating the Plaintiff's vehicle in the town of Lake Andes, to the stop and arrest – occurred within an area demarcated as Tribal Block Group B on the 2020 US Census map, all within the boundaries of the Yankton Sioux Reservation established by the 1858 Treaty between the United States and the Yankton Tribe. The Defendant governmental entity had no legitimate business in locating and arresting the Defendant in the area demarcated as Tribal Block Group B or the Town of Lake Andes. The location the events occurred was within Indian country under clearly established federal law.

25. Defendants used excessive force in arresting the Plaintiff on December 2, 2021.
26. Plaintiff's arrest on December 2, 2021, was without a warrant.
27. Plaintiff's arrest on December 2, 2021, was without probable cause that he had committed a crime in Charles Mix County.
28. Plaintiff's arrest on December 2, 2021, was unreasonable.
29. Defendants arrested Plaintiff on December 2, 2021, without jurisdiction to do so.
30. Defendants violated Plaintiff's rights under the United States Constitution.
31. Plaintiff's constitutional deprivations were caused by official policy or custom of the Defendant governmental entity.
32. The training program of the Defendant governmental entity was inadequate in relation to the tasks performed by the Charles Mix County Sheriff's Office, including an official indifference to the rights of persons with whom the Charles Mix County Sheriff's Office come into contact, and the inadequacy of the training caused the Plaintiff's constitutional deprivations.
33. As a result of Defendants' conduct outlined above, Plaintiff suffered deprivations of his constitutional rights, injuries and damages including, but not limited to, physical pain and suffering, mental pain and suffering and emotional anguish and distress, harm to his economic and dignitary interests, pecuniary loss, medical costs and expenses, and other damages in an amount to be determined by a jury.

COUNT 1: DEPRIVATION OF RIGHTS – 42 U.S.C. § 1983

34. Plaintiff restates and realleges the foregoing paragraphs 1 through 33 as though fully set forth herein.
35. Defendants Rolston, Thaler, and Budavich, officially and individually, acted under the color of state law causing deprivations of Plaintiff's federal rights.

36. Defendants deprived Plaintiff of substantive and procedural due process under the Fourteenth Amendment of the United States Constitution.

37. Defendants deprived Plaintiff of the right to be free from unreasonable searches and seizures under the Fourth Amendment of the United States Constitution.

38. Defendants intentionally violated Plaintiff's federal rights or acted with reckless indifference to the Plaintiff's federal rights, as detailed by the above facts.

39. Defendants violated Plaintiff's clearly established federal rights based on the facts outlined above.

40. As a result of Defendants' conduct outlined above, Plaintiff has suffered injuries and damages, including irreparable harm for which an immediate threat continues to exist entitling Plaintiff to equitable relief.

41. Plaintiff is entitled to recover reasonable attorney's fees under 42 U.S.C. § 1988.

COUNT 2: NEGLIGENCE / GROSS NEGLIGENCE

42. Plaintiff restates and realleges the foregoing paragraphs 1 through 41 as though fully set forth herein.

43. Defendants owed Plaintiff a duty to exercise reasonable and ordinary care and awareness in acting as law enforcement officers under the color of state law, and a duty of care not to violate Plaintiff's rights.

44. Defendants negligently and carelessly departed from and breached the duties it owed to Plaintiff, based on the conduct detailed above.

45. As a direct and proximate result of Defendants' breaches of the duties owed to Plaintiff, Plaintiff has suffered injuries and damages which are compensable under South Dakota law, as shown by the above alleged facts.

46. Defendants' conduct in breaching the duties owed to Plaintiff and in causing the Plaintiff to suffer injuries and damages, was knowing, willful, intentional and/or reckless.

47. Defendants knew or should have known that there existed a substantial likelihood, or that it was a virtual certainty, that Plaintiff's rights would be violated and that he would suffer constitutional harm, physical injuries, and damages because of their course of action.

48. Despite that knowledge, Defendants engaged in their course of action anyway.

49. Defendants are guilty of gross negligence and willful, wanton, or reckless misconduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

- A. Declaring the Town of Lake Andes under the continuing, primary jurisdiction of the Yankton Sioux Tribe and United States.
- B. Awarding prospective declaratory and injunctive relief proscribing the constitutional violations outlined above.
- C. Awarding compensatory, general, special, and consequential damages for injuries and harm caused to Plaintiff by Defendants' deprivations and violations Plaintiff's federal rights and by Defendants' negligence, in an amount to be determined by the jury in this case.
- D. Awarding punitive damages.
- E. Awarding attorney's fees.
- F. Awarding case costs.
- G. Interest.
- H. For such other and further relief as deemed appropriate.

PLAINTIFF HEREBY DEMANDS TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

Respectfully submitted this 12th day of May 2024.

/s/ Tucker Volesky_____
Tucker Volesky
Attorney at Law
356 Dakota Ave. S.
Huron, SD 57350
(605) 352-2126
tucker.volesky@tuckervoleskylaw.com

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Chaske Rockboy

(b) County of Residence of First Listed Plaintiff Charles Mix County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Tucker Volesky, 356 Dakota Ave. S., Huron, SD 57350
(605) 352-2126

DEFENDANTS

Charles Mix County, South Dakota, Randy Thaler, Derik Rolston, and Jan Budavich

County of Residence of First Listed Defendant Charles Mix County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 INTELLECTUAL PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. Section 1983
Brief description of cause:
Deprivation of Rights

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

May 12, 2024

Tucker Volesky

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____